

No. 1038-59 CIVIL ACTION

Vacheron

VERSUS

CERTIFICATE
OF
READINESS FILED

Fisher

[illegible]

No. 1038

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 10 1959

HARRY M. HULL, Clerk

----- X
:
VACHERON & CONSTANTIN-LE COULTRE
WATCHES, INC., :
580 Fifth Avenue, New York 36, N.Y. :
Plaintiff, :

-vs- :

ARTHUR FISHER, :
Register of Copyrights, :
Washington, D. C. :

Defendant :
----- X

Civil Action
No.

1038-59

C O M P L A I N T
TO REGISTER COPYRIGHT

1. This action arises under the Copyright Law, Title 17, United States Code, Sections 11 and 209. This Court has jurisdiction under Title 28, United States Code, Sections 1338(a) and 1651.

2. Plaintiff, VACHERON & CONSTANTIN-LE COULTRE WATCHES, INC., is a corporation organized under and by virtue of the laws of the State of New York, having an office at 580 Fifth Avenue, New York 36, New York.

3. Defendant, ARTHUR FISHER, is the duly appointed, qualified, and acting Register of Copyrights.

4. Plaintiff, acting through its duly authorized agents, caused the publication and sale of a certain wrist watch known as the "Galaxy" watch in the latter part of 1955 with a notice of copyright comprising a "c" in a circle included on the dial face thereof and with the notice "Vacheron & Constantin-Le Coultre Watches, Inc. c" on the back of the watch case.

5. Section 4 of Title 17, United States Code provides:

"The works for which copyright may be secured under this title shall include all the writings of an author."

6. Section 10 of Title 17, United States Code, provides in part:

"Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; * * *."

7. Section 11 of Title 17, United States Code, provides:

"Such person may obtain registration of his claim to copyright by complying with the provisions of this title, including the deposit of copies, and upon such compliance the Register of Copyrights shall issue to him the certificate provided for in section 209 of this title."

8. On January 4, 1957, plaintiff filed an application with defendant for registration of its copyright on the dial face of its "Galaxy" watch as a three-dimensional work of art along with the required filing fee and photographs of the work of art in lieu of copies thereof.

9. On January 28, 1957, defendant, through a duly authorized agent, wrote plaintiff a letter refusing to register plaintiff's copyright on the grounds that the design contained no elements which could be identified as copyrightable under the Copyright Law although the application and accompanying photographs were in formal compliance with the regulations governing deposit of photographs in lieu of copies.


10. On December 15, 1958, plaintiff filed a "Petition" with defendant praying that said copyright be registered and that

defendant issue a certificate of registration to plaintiff. On January 26, 1959, defendant in a letter to plaintiff denied plaintiff's said petition upon the ground that the subject matter of the copyright sought to be registered was not proper statutory subject matter under the Copyright Law.

11. Plaintiff at all times has complied with Title 17, United States Code, respecting the registration of copyright on works of art, and has complied at all times with the rules and regulations of the Copyright Office relating to registration of claims to copyright on works of art.

12. Defendant has exceeded his statutory authority by unlawfully refusing to register the copyright sought to be registered by plaintiff.

W H E R E F O R E, plaintiff prays that this Court render its judgment and order and direct defendant, ARTHUR FISHER, as Register of Copyrights, to register plaintiff's claim of copyright and to issue to plaintiff a certificate of registration as provided for in Title 17, United States Code, Section 11; and for such other and further relief to which plaintiff may be justly entitled in the premises.


CLARENCE M. FISHER, ESQ.
Attorney for Plaintiff,
944 Pennsylvania Bldg.,
425 Thirteenth Street, N. W.,
Washington 4, D. C.

Of Counsel:

STANTON T. LAWRENCE, JR., ESQ.
ROBERT McKAY, ESQ.

PENNIE, EDMONDS, MORTON, BARROWS
AND TAYLOR
247 Park Avenue,
New York 17, New York

HYUBA W' HOIT' 1958
JUL 10 1959
FILED

NEW YORK 12, NEW YORK
342 E 57th Street,
7th Floor
LEVIN, EDWARDS, MORTON, BARON &
ROBERT W. MCKAY, ESQ.
STANLEY L. LAWRENCE, JR., ESQ.
Of Counsel:

FILED

APR 10 1959

HARRY M. HULL, Clerk

Washington 4, D. C.
432 Dupont Circle, N. W.
344 Pennsylvania Bldg.
Attorney for Plaintiff
CLARENCE M. FISHER, ESQ.

Further relief to which Plaintiff may be justly entitled in the premises,
in Title 17, United States Code, Section 11; and for such other and
and to issue to Plaintiff a certificate of registration as provided for
as Registrar of Copyrights, to register Plaintiff's claim of copyright
under its judgment and order and direct defendant, ARTHUR FISHER,

WHEREFORE, Plaintiff prays that this Court
by Plaintiff.

by unlawfully refusing to register the copyright sought to be registered

13. Defendant has exceeded his statutory authority
on works of art.

of the Copyright Office relating to registration of claims to copyright
of art, and has complied at all times with the rules and regulations
United States Code, respecting the registration of copyright on works

14. Plaintiff at all times has complied with Title 17,
under the Copyright Law.

sought to be registered was not proper statutory subject matter
and petition upon the ground that the subject matter of the copyright
January 28, 1958, defendant in a letter to Plaintiff denied Plaintiff's
defendant issue a certificate of registration to Plaintiff. On

RECEIVED
APR 10 2 32 PM '59
U.S. MARSHAL

United States District Court

FOR THE

District of Columbia

LAW

DIVISION

1038-59

CIVIL ACTION FILE NO. _____

VACHERON & CONSTANTIN-LE COULTRE WATCHES, INC.
580 Fifth Avenue
New York 36, New York

Plaintiff

v.

ARTHUR FISHER
Register of Copyrights
Washington, D. C.

Day
a

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

CLARENCE M. FISHER

plaintiff's attorney , whose address

944 PENNSYLVANIA BUILDING
WASHINGTON 4, D. C.

an answer to the complaint which is herewith served upon you, within ^{20X}60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

HARRY M. HULL

Clerk of Court.

Robert C. Hume
Deputy Clerk.

Date: April 10, 1959

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____, 19____,

I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel _____ \$ _____

Service _____

United States Marshal.

By _____
Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of _____, 19____.

[SEAL] _____

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____
United States District Court
FOR THE _____

v.

SUMMONS IN CIVIL ACTION

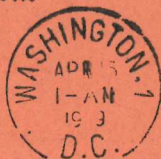
Returnable not later than _____ days
after service.

Attorney for Plaintiff.
FPI-LK-8-29-55-80M-2546

C. H. 1038-59
Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300

(GPO)



POSTMARK OF DELIVERING
OFFICE

Return to

U. S. Marshal

(NAME OF SENDER)

Street and Number,
or Post Office Box,

Courthouse 3rd. & Conner. Ave

REGISTERED ARTICLE

177934

No. _____

INSURED PARCEL

WASHINGTON,

No. _____

D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1

Attorney General

(Signature or name of addressee)

2

George H. Visto

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery

Feb 14, 19*59*

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

Vacheron + Constantin etc Clerk's No. 1038-59

vs.

Fisher

U. S. Marshal No. _____

Received by U. S. M. _____
(Date and time)

I hereby certify and return that I served the annexed Summons & Complaint
on the therein-named Oliver Vasch, U.S. District Attorney
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with _____

Mrs. Wall, Sec.
personally at U.S. Courthouse in the said District
(Address—Street number, apartment number) (City)

at _____ a. m.—p. m., on the 13 day of April, 19 59

CHARLES H. WARD, JR.

Marshal's fees _____

United States Marshal.

Mileage _____

By Emergover
Deputy.

FILED

APR 29 1959

HARRY M. HULL, CLERK

I hereby certify and return that I served the annexed Summons & Complaint
on the therein-named Attorney General
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

by registered mail
personally at Dept. of Justice in the said District
(Address—Street number, apartment number) (City)

at _____ a. m.—p. m., on the 14 day of April, 19 59

CHARLES H. WARD, JR.

Marshal's fees _____

United States Marshal.

Mileage _____

By Jeanette Anderson
Deputy.

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

*Vacheron + Constantin Le Coultre
Watches Inc*

Clerk's No. *CA 1038-59*

vs.

Arthur Fisher

U. S. Marshal No. _____

Received by U. S. M. _____

(Date and time)

I hereby certify and return that I served the annexed *Summons & complaint*
on the therein-named *Arthur Fisher, Register of Copyrights*
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with *Him*

personally at *Library of Congress* in the said District
(Address—Street number, apartment number) (City)
at _____ a. m.—p. m., on the *24* day of *April*, 19 *59*

Marshal's fees _____

Mileage _____

By

CHARLES H. WARD, JR.

United States Marshal.

John W. Mumach

Deputy.

FILED

APR 29 1959

HARRY M. HULL, CLERK

I hereby certify and return that I served the annexed _____
(Writ)
on the therein-named _____
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with _____

personally at _____ in the said District
(Address—Street number, apartment number) (City)
at _____ a. m.—p. m., on the _____ day of _____, 19 _____

Marshal's fees _____

United States Marshal.

Mileage _____

By

Deputy.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VACHERON & CONSTANTIN-LE COULTRE
WATCHES, INC.
580 Fifth Avenue
New York 36, New York,

Plaintiff

v.

ARTHUR FISHER,
Register of Copyrights
Washington, D. C.,

Defendant.

CIVIL ACTION

NO. 1038-59

FILED

JUN 12 1959

ANSWER TO COMPLAINT
TO REGISTER COPYRIGHT

HARRY M. HULL, CLERK

Comes now the defendant by and through his attorney,
the United States Attorney, and in answer to the complaint
avers as follows:

First Defense

The complaint fails to state the claim upon which relief
can be granted.

Second Defense

Answering specifically the numbered paragraphs of the
complaint, defendant avers as follows:

1. Defendant denies the allegations concerning jurisdic-
tion in paragraph 1. Defendant further denies that plaintiff
has a cause of action against the defendant.

2. Defendant is without knowledge or information
sufficient to form a belief and, therefore, denies each and
every allegation of paragraph 2.

3. Defendant admits that he is the duly appointed and
qualified Register of Copyrights referred to in paragraph 3.

4. Defendant is without knowledge or information sufficient to form a belief and, therefore, denies each and every allegation of paragraph 4, except that defendant denies that there can be a "publication and sale" within the meaning of the Copyright Act of the Galaxy watch here in issue.

5, 6 and 7. Paragraphs 5, 6 and 7 merely plead parts of Title 17, United States Code and do not require an answer.

8. Defendant denies the allegations of paragraph 8, except that defendant admits that a form entitled "FORM G APPLICATION FOR REGISTRATION OF A CLAIM TO COPYRIGHT IN A WORK OF ART," the fee of \$4.00, and two photographs of a watch identified as the Galaxy watch were received in the Copyright Office on January 4, 1957.

Defendant avers that plaintiff first filed an application for registration of said Galaxy watch as a "work of art," along with a fee of \$4.00 and a photograph of said watch, on September 14, 1955, but registration was refused by the Register of Copyrights on September 29, 1955, on the ground that the Galaxy watch was not a "work of art" within the meaning of the Copyright Law.

9. Answering paragraph 9, defendant admits that in a letter dated January 29, 1957, the reapplication of January 4, 1957 for registration of the claim to copyright in the Galaxy watch here in issue, as a "work of art," was refused by the Register of Copyrights after careful consideration. The Register of Copyrights in said letter agreed that photographs could be deposited in lieu of the watch to avoid deposit of the actual watch, and stated that this Galaxy watch

design "contains no elements which, either alone or in combination, could be identified as copyrightable under the present law."

10. Answering paragraph 10, defendant admits that on December 16, 1958, plaintiff filed its third set of application papers requesting registration of the watch here in issue as a "work of art."

This third application was accompanied by a petition to the Register of Copyrights calling attention to the decision of the District Court for the Southern District of New York in the case of Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Company, Inc., 155 F. Supp. 932, wherein the Court held that the Galaxy watch here in issue was not a "work of art" within the meaning of the copyright laws, while holding that plaintiff's design patent number Des.178,091 for the same article of manufacture was valid and infringed. The petition to the Register of Copyrights further noted the decision of the Court of Appeals for the Second Circuit in the same case, 260 F. 2d 637, wherein the Court majority referred the case back to the District Court for a hearing only on the question of validity of the design patent.

Defendant further admits that in a letter dated January 26, 1959, he advised plaintiff that he had "carefully reviewed this matter, including the petition, and have come to the conclusion that the 'Galaxy Watch' is not a work of art and is not entitled as such to copyright registration."

11. Defendant denies each and every allegation in paragraph 11. Defendant further denies that the watch in issue

is a "work of art" under Title 17, United States Code, and the Rules and Regulations of the Copyright Office. Defendant avers that plaintiff has not complied with the notice requirements of Title 17, United States Code, and the Rules and Regulations of the Copyright Office. Defendant further avers that even if plaintiff obtained a valid copyright (which defendant denies), the right to copyright protection was thereafter lost through publication without the copyright notice required by the copyright laws.

12. Defendant denies each and every allegation of paragraph 12 and avers that plaintiff has obtained no copyright, on the watch in issue, under the Copyright Laws of the United States.

Third Defense

Defendant avers that the Galaxy watch in issue is not a "work of art" under Section 5 of the Copyright Act, Title 17 United States Code, and that it is not entitled to registration by the Register of Copyrights under the Copyright Laws of the United States.

Fourth Defense

Defendant avers that the Galaxy watch, for which registration is sought, does not constitute the "writing" of an author or represent matter properly copyrightable under Article I, Section 8 of the Constitution and Title 17, United States Code.

Fifth Defense

Defendant avers that the Galaxy watch, for which registration is sought, is not, as claimed by the plaintiff, the

"writing" of an author under the Constitution and laws of the United States but rather represents an article of manufacture for which protection has already been obtained under the Design Patent Laws, 35 U.S.C., Sections 171,173, where the period of monopoly runs for 14 years and not 56 years (28 years plus 28 years renewal) as would be the case if registration were permitted under the Copyright Laws.

The aforesaid protection under the Design Patent Laws grows out of the issuance to the plaintiff of Design Patent D-178,091 on June 19, 1956, on the basis of an application filed September 14, 1955. The watch shown in this design patent is identical with the Galaxy watch here in issue and for which copyright registration has been requested.

Furthermore, defendant avers that registration of the watch in issue is contrary to the Regulations of the Copyright Office.

Sixth Defense

Defendant avers that the alleged copyright in suit was abandoned by plaintiff's act in procuring the issuance of the design patent D-178,091 on the Galaxy watch, by reason of the fact that the obtaining of the design patent involved a contract with the Government to the effect that, in return for the granting of the patent by the Government, the subject matter of the design patent - the Galaxy watch - would become public property after fourteen years with the expiration of the design patent.

Seventh Defense

Defendant avers that the alleged copyright in suit was abandoned by the publication of advertisements showing the

Galaxy watch by customers of the plaintiff, including illustrations of the Galaxy watch furnished to said customers by the plaintiff which illustrations and advertisements did not bear a copyright notice.

Eighth Defense

Defendant avers that the watch in issue does not possess the originality necessary for the creation of a copyright monopoly (which unlike a patent can run for 56 years), in view of the watch structures already in the public domain, of which the following are examples:

United States Design Patents

Des. 78,487	- Schwab and Wuischpard	of May 7, 1929
Des. 85,678	- Von Frankenberg	of Dec. 1, 1931
Des. 96,642	- Blumstein	of Aug. 27, 1935
Des. 115,901	- Banick	of Aug. 1, 1939
Des. 116,130	- Ambrose	of Aug. 15, 1939
Des. 129,370	- Dupertuis	of Sept. 9, 1941
Des. 140,816	- Heintz	of April 10, 1945
Des. 145,610	- Banick	of Sept. 24, 1946
Des. 146,101	- Gardner	of Dec. 24, 1946
Des. 146,102	- Gardner	of Dec. 24, 1946
Des. 150,628	- Goodkind	of Aug. 17, 1948
Des. 153,007	- Newhouse	of Mar. 8, 1949
Des. 153,008	- Newhouse	of Mar. 8, 1949
Des. 154,873	- Newhouse	of Aug. 16, 1949
Des. 159,306	- Warren	of July 11, 1950
Des. 168,521	- Rodanet	of Dec. 30, 1952
Des. 172,442	- Richter	of June 15, 1954

United States Mechanical Patents

1,159,162	- Besson	of Nov. 2, 1915
1,887,479	- Bulova	of Nov. 8, 1932
1,949,024	- Melik	of Feb. 27, 1934
2,153,004	- Rodanet	of Apr. 4, 1939
2,202,581	- Hammer	of May 28, 1940
2,427,961	- Group	of Sept. 23, 1947
2,466,312	- Heintz	of Apr. 5, 1949
2,467,050	- Piquerez	of Apr. 12, 1949
2,604,418	- Stern	of July 22, 1952
2,606,418	- Fluckiger	of Aug. 12, 1952
2,852,908	- Stern et al	of Sept. 23, 1958
Re.22,640	- Prins	of May 1, 1945

Foreign Patents

Swiss	115,557	- Published July 1, 1926
Swiss	153,244	- Published June 1, 1932
Swiss	158,296	- Published Jan. 16, 1933
Swiss	230,294	- Published Mar. 16, 1944
Swiss	257,783	- Published Apr. 1, 1949
Swiss	270,580	- Published Dec. 1, 1950

Foreign Patents - Cont.

Swiss 296,061 - Published Apr. 1, 1954
Swiss 305,461 - Published May 2, 1955
French 746,487 - Published May 29, 1933
German 822,293 - Published Oct. 11, 1951
British 409,143 - Published Apr. 26, 1934

Publications

Revue Internationale De L'Horlogerie of April 1954, unnumbered pages 17,18,24 and 25.

Revue Internationale De L'Horlogerie of Dec. 1954, unnumbered 25 and Section entitled "Modeles Selectionnes" page 7 - Patek Philippe item.

Journal Suisse d'Horlogerie - Sept.-Oct.1945 - unnumbered page 23 (Girard Perregaux), and page 54 (Recta).

Journal Suisse d'Horlogerie - Jan.-Feb. 1950 - page 2 and Section entitled "Communiques from the Exhibitors" Page 9 - Items 1 and 6.

Journal Suisse d'Horlogerie - Jan.-Feb. 1951 - page preceding page 1 and Page 25 Item 7.

Journal Suisse d'Horlogerie - Sept.-Oct. 1952, Advertisements of Ogival S.A. and Audemars Piguet.

Journal Suisse D'Horlogerie - Sept.-Oct. 1954 page 372 (Movado), page A 13, and page A8 (Recta).

Journal Suisse d'Horlogerie - May-June 1955, Page A15.

La Suisse Horlogere - December 1952 - unnumbered page 11.

Jewelers' Buyers Guide 1949 Edition - page 81.

and other prior art which, when ascertained, defendant prays leave to add to this answer.

Plaintiff has conceded that its so-called "time display and indexing mechanism" of the Galaxy watch is old in the art, for it abandoned, in view of the prior art cited by the Patent Office Examiner, its mechanical patent application Serial No. 580,201 filed April 24, 1956, which showed in its drawings the exact Galaxy watch here in issue.

Ninth Defense

Defendant asserts that the individual elements of the device in issue are primarily functional and constitute the working parts of an operating machine defined herein as a

watch, and therefore this operating mechanism is not a "writing" under Article I, Section 8 of the Constitution and not properly within the Copyright Laws of the United States.

Tenth Defense

Defendant further asserts that the sole intrinsic function of the operating mechanism defined herein as a watch is its utility and hence it is not a "writing" or the creation of an author and not copyrightable under the Copyright Laws of the United States.

Eleventh Defense

The cause of action sought to be asserted is barred by the applicable Statute of Limitations (17 U.S.C. 115).


WHEREFORE, defendant, having fully answered, demands judgment together with the costs of this suit.



OLIVER GASCH


United States Attorney


EDWARD P. TROXELL,

Principal Assistant United States Attorney



JOHN F. DOYLE
Assistant United States Attorney


ROBERT J. ASMAN
Assistant United States Attorney


H. L. GODFREY
Attorney, Department of Justice

CERTIFICATE OF SERVICE

Copy of the foregoing Answer to Complaint to Register Copyright was served on Clarence M. Fisher, Esq., attorney for the plaintiff, by mailing the same to him, postage prepaid, at his address: 944 Pennsylvania Building, 425 13th Street, N. W., Washington 4, D. C., this 12th day of June, 1959.


ROBERT J. ASMAN
Assistant United States Attorney

Assistant United States Attorney

ROBERT J. ASHMAN

W. M. Washington & D. C. this 12th day of June, 1959.
at his address: 644 Pennsylvania Building, 452 13th Street,
for the Plaintiff, by mailing the same to him, Postage prepaid.
Copyright was served on Clarence M. Fisher, Esq., attorney
Copy of the foregoing answer to Complaint to Register

CERTIFICATE OF SERVICE

JUN 12 1959

Attorney Department of Justice

H. G. CODES

HARRY M. HULL, CLERK

Assistant United States Attorney

ROBERT J. ASHMAN

Assistant United States Attorney

JOHN E. DOYLE

Attorney

Principal Assistant United States

EDWARD B. BROXELL

United States Attorney

OLIVER CUSCH

Judgment together with the costs of this suit.

WHEREFORE, defendant, having fully answered, demands
the applicable statute of limitations (15 U.S.C. 112).

The cause of action sought to be asserted is barred by

Eleventh Defense

the United States.

an author and not copyrightable under the Copyright laws of
utility and hence it is not a "writing" or the creation of
of the operating mechanism defined herein as a watch is its

Defendant further asserts that the sole intrinsic function

Tenth Defense

within the Copyright laws of the United States.

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watch, and therefore this operating mechanism is not a "writing"

JURY
ACTION

Civil No. 1038-59

VACHERON

Plaintiff,

VS.

FISHER

Defendant.

4562

CAUSE CALENDARED

June 12, 1959

Attorney for plaintiff:

Clarence M. Fisher

944 Penn Bldg.

Attorney for defendant:

Robert J. Asman

U.S. Atty's Office

H. L. Godfrey

Dept. of Justice

The suit is for REGISTER

COPY RIGHT

Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VACHERON & CONSTANTIN-LE
COULTRE WATCHES, INC.,

Plaintiff.

vs.

ARTHUR FISHER,

Defendant.

Civil Action No. 1038-59

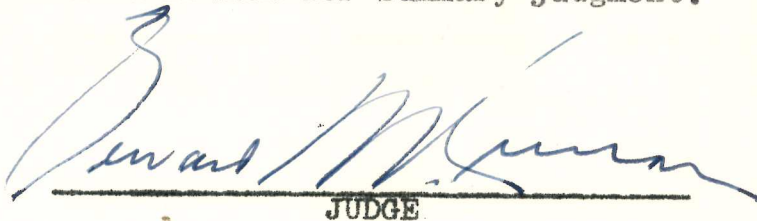
FILED
OCT 13 1959

HARRY M. HULL, Clerk

O R D E R

This cause having come before the Court on the call of the calendar and it appearing to the Court that the case was in such posture that a certificate of readiness could not be filed it is by the Court this 13 day of Oct, 1959,

ORDERED that defendant be and hereby is granted the period of time to and including Dec. 14, 1959, within which to complete discovery procedures and file a Certificate of Readiness, or file a motion for summary judgment.


JUDGE

SEEN:

Clarence M. Fisher
Atty for Plaintiff

Robert J. Asman
Asst. U. S. Atty.
Atty. for deft.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

OCT 29 1959

VACHERON & CONSTANTIN-LE COULTRE
WATCHES, INC.
580 Fifth Avenue
New York 36, New York,

Plaintiff,

v.

ARTHUR FISHER,
Register of Copyrights
Washington, D. C.

Defendant.

HARRY M. HULL, CLERK

Civil Action

No. 1038-59

PLAINTIFF'S INTERROGATORIES UNDER RULE 33

Now comes plaintiff, Vacheron & Constantin-LeCoultre Watches, Inc. pursuant to Rule 33, Federal Rules of Civil Procedure, and demands that defendant, Arthur Fisher, Register of Copyrights, make answer, separately and fully in writing under oath and over his signature to the following numbered interrogatories on or before November 16, 1959:

1. (a) Has a copyright been registered at any time on a work of art which was a watch?

(b) If the answer to 1(a) is yes, when was such copyright registered, who registered the copyright and what was the registration number of the copyright?

2. (a) Has a copyright been registered at any time on a work of art which included the dial face of a watch?

((b) If the answer to 2(a) is yes, when was such copyright registered, who registered the copyright and what was the registration number of the copyright?

3. (a) Has a copyright been registered at any time on a work of art which included the time indicator hands of a watch?

(b) If the answer to 3(a) is yes, when was such copyright registered, who registered the copyright and what was the registration number of the copyright?

4. (a) Has a copyright been registered at any time on a work of art which was a piece of costume jewelry and which included a configuration of a watch?

(b) If the answer to 4(a) is yes, when was such copyright registered, who registered the copyright and what was the registration number of the copyright?

5. (a) Has a copyright been registered at any time on jewelry constituting three-dimensional representations of a "limp" watch from the paintings of Salvadore Dali?

(b) If the answer to 5(a) is yes, who is the owner of the registration, when was the copyright registered and what was the registration number of the copyright?

6. Has a copyright been registered at any time on a clock as a work of art?

7. (a) If the answer to question 6 is yes, did the work of art on which a copyright was registered include the time indicator hands of a clock?

(b) If the answer to question 6 is yes, did the work of art on which a copyright was registered include the dial face of a clock?

(c) If the answer to question 6 is yes, did the work of art on which a copyright was registered include both the dial face and the time indicator hands of a clock?

(d) If the answer to 7(c) is yes, who is the owner of the registration, when was the copyright registered and what is the registration number?

8. (a) Has a copyright registration ever been granted on a sundial as a work of art?

(b) If the answer to 8(a) is yes, who is the owner of the registration, when was the copyright registered and what is the registration number of the copyright?

9. Did the Amicus Curiae brief submitted by the Register of Copyrights to the United States Supreme Court in the case of Mazer v. Stein, No. 228, October term 1953 reflect the "views of the Copyright Office and a statement of its relevant practice" at the time the brief was filed?

10. Did the Amicus Curiae brief submitted by the Register of Copyrights in the Mazer v. Stein case reflect the "views of the Copyright Office and a statement of its relevant practice" as of January 4, 1957?

11. If the answer to question 10 is no, how did the January 4, 1957 views and practices of the Copyright Office differ from the views and practices set out in the Amicus Curiae brief in the Mazer v. Stein case?

12. If the answer to question 10 is no, was it the policy of the Copyright Office on January 4, 1957 to refuse registration of a copyright on a work of art because it possessed utilitarian aspects?

13. If the answer to question 10 is no, was it the policy of the Copyright Office on January 4, 1957 to refuse registration of a copyright because an applicant might have been eligible for either a copyright or a design patent on the same work of art?

14. (a) Was it the policy of the Copyright Office as of January 4, 1957 to refuse registration of a copyright on a work of art for which a design patent had issued?

(b) If the answer to 14(a) is yes, was the reason for refusal to register the copyright because the

design patent and copyright laws provided "generally similar protection"?

(c) If the answer to 14(a) is yes, was the refusal to register based upon any statute of the United States?

(d) If the answer to 14(c) is yes, what was the statute?

15. (a) Did the Copyright Office as of January 4, 1957 as a matter of policy determine "originality" of a work of art by reference to its "novelty"?

(b) If the answer to 15(a) is no, did the Copyright Office as of January 4, 1957 as a matter of policy determine "originality" of a work of art by reference to other prior art in the same class in which the work of art on which copyright registration was sought was classified?

(c) If the answer to 15(b) is no, has the Copyright Office at any time, before plaintiff filed its application for registration of copyright on its watch as a work of art, referred to the prior art in which a work of art was classified in order to determine the "originality" of the work of art?

(d) If the answer to 15(c) is yes, state the subject matter of the work of art on which reference was made to the prior art and when such determination was made.

16. (a) Did the Register of Copyrights have a search conducted in the files of the Patent Office to determine the "originality" of plaintiff's watch as a work of art?

(b) If the answer to 16(a) is yes, has the Register of Copyrights ever before had the files of the Patent Office searched in order to determine the "originality" of a work of art?

(c) If the answer to 16(b) is yes, when were such searches conducted, what was the subject matter of the individual works of art and what were the names of applicants seeking registration?

17. If the answer to question 10 is no, did the Copyright Office as of January 4, 1957 make any distinction between a work of art and a work of fine art?

18. If the answer to question 10 is no, did the Copyright Office as of January 4, 1957 make any distinction in the registration of a copyright on a work of art between works that were to be mass produced and a work of which only a single piece was to be made?

19. Did the Copyright Office as of January 4, 1957 as a matter of policy refuse registration on "objects primarily designed for a useful purpose, but made ornamental to please the eye and gratify the taste, such as an ornamental clock"?



CLARENCE M. FISHER, ESQ.
Attorney for Plaintiff
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425 Thirteenth Street, N. W.
Washington 4, D. C.

Of Counsel:

STANTON T. LAWRENCE, JR., ESQ.
ROBERT McKAY, ESQ.

PENNIE, EDMONDS, MORTON, BARROWS
AND TAYLOR
247 Park Avenue
New York 17, New York

Service of a copy of the Plaintiff's Interrogatories under Rule 33 is hereby acknowledged.

OCT. 29 1959



United States Attorney, *MDW*
Attorney for Defendant

(c) If the answer to (b) is yes, when

were such articles submitted? What was the subject matter of the articles? I want to know the names of the authors and what work the names of

applicants seeking registration?

14. If the answer to question 13 is no, did

the Copyright Office as of January 4, 1954 make any

distinction between work of art and work of literature?

15. If the answer to question 14 is no, did the

Copyright Office as of January 4, 1954 make any distinction

in the registration of a copyright as a work of art between

works that were produced and a work of which

only a single piece was made?

16. Did the Copyright Office as of January 4,

1954 as a matter of policy refuse registration on "objects

primarily designed for a special purpose, but made

ornamental for, or for the use of, the taste, such

as an ornamental clock?"

FILED

OCT 29 1959

HARRY M. HULL, CLERK

BERNARD M. SHAW, ESQ.
Attorney for Plaintiff
444 Broadway, New York
10013, New York
N. Y.

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BERNARD M. SHAW, ESQ.
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10013, New York

Enclosed is a copy of the Plaintiff's Interrogatories

under Rule 33 as hereby acknowledged.

United States Attorney
Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 13 1959

VACHERON & CONSTANTIN-LE
COULTRE WATCHES, INC.,

Plaintiff,

v.

ARTHUR FISHER,

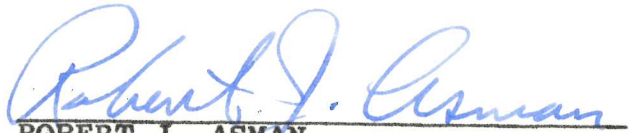
Defendant.


HARRY M. HULL, CLERK

Civil Action No. 1038-59

STIPULATION

It is hereby stipulated by and between counsel for the parties herein that the time within which defendant may answer, object to, or otherwise plead with respect to plaintiff's interrogatories under Rule 33 served herein under notice dated October 29, 1959, be and the same is hereby extended to and including November 27, 1959.


ROBERT J. ASMAN
Assistant United States Attorney
Attorney for Defendant


CLARENCE M. FISHER
Attorney for Plaintiff.

Date: Nov 12, 1959

NOV 13 1959

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 27 1959

HARRY M. HULL, CLERK

VACHERON & CONSTANTIN-LE COULTRE :
WATCHES, INC. :
580 Fifth Avenue :
New York 36, New York, :

Plaintiff, :

v. :

Civil Action

No. 1038-59

ARTHUR FISHER, :
Register of Copyrights :
Washington, D. C. :

Defendant. :

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGA-
TORIES UNDER RULE 33

Defendant responds to plaintiff's interrogatories as follows:

1 (a). To the best of my knowledge, no registration has been made in the Copyright Office for a claim to copyright in a watch or clock, because watches and clocks are not considered as "writings of an author" in the constitutional sense, nor are they included in the classifications listed in Title 17, U. S. Code, Section 5. Where applications for "works of art" are registered, such action is taken despite the fact that they may embody a mechanical device such as a watch or clock, but registration extends only to those aspects of the deposited work which fall within the copyright law. The so-called "limp" watch of Salvador Dali, referred to in question 5, is a "work of art" in the form of a jeweled clip, depicting the famous "limp" watch in the Dali painting, and embodies not only the sculptured representation of the "limp" which constitutes copyrightable subject matter, but also a small time-piece suitable for conveying the time of day which does not

constitute a "work of art." The claim to copyright in the "work of art" was submitted in the name of Alemany & Ertman, Inc., gave a date of publication of September 9, 1949, and was registered under number GP 14191.

There may be other watches included in "works of art" for which registrations have been made in the Copyright Office, but it would be impossible to locate them all and, in any event, the watch being an operating machine, would not be copyrightable. The index of registrations is maintained under the headings of copyright claimant and title of work; there may also be cross reference cards in the name of the author. There is no category or subject index and it is not possible to determine which registrations, if any, included watches any more than it would be possible to ascertain which anthologies included Hamlet's Soliloquy. Even a reading of the some 23 million catalog cards covering some ten million registrations made in the Copyright Office would not afford a definitive answer since, in many cases, the title to a work may give no indication that it embodies a watch. A good example is the Dali jeweled clip mentioned above; the claim was not registered in the name of Dali and the title "Persistence of Memory Clip" furnished no clue to the presence of a timepiece. Examination of the actual deposits might furnish a more complete answer but this is not feasible both because of the monumental nature of the task and the fact that, due to space limitations, it is impossible to keep all deposits, and they are periodically disposed of under the provisions of sections 213 and 214 of Title 17 U. S. Code.

(b) Although the reply to question 1(a) is not considered a "yes" answer, the information contained in that reply may be pertinent here.

2 (a). No, in the sense referred to in the reply to question 1(a). A claim to copyright in a "work of art" embodied in or upon

the face of an object, whether or not it be the dial face of a watch, may possibly have been registered, but for the reason given in the reply to question 1(a), it is not feasible to attempt to conduct a search in order to ascertain such fact. Even if located it would not indicate that the Office registered dial faces of watches, but only that a particular "work of art" was entitled to registration irrespective of the dial face -- the dial face of the mechanism itself not being subject to copyright.

(b) Since the answer to question 2(a) was not "yes," this part of the question is inapplicable.

3(a). I do not understand this question, but attention is directed to the fact that the Dali "work of art" mentioned in the reply to question 1(a) embodied a sculptural representation of a "limp" watch possessing sculptural non-functional hands, and also a mechanical timepiece containing functional hands. However, the operating hands and face of a clock or watch are functionally cooperative and constitute the working parts of a clock mechanism and do not constitute a "work of art" or writing.

(b) Although the answer to question 3(a) is not "yes," see the reply to question 1(a).

4 (a). See the reply to question 1(a).

(b). See the reply to question 1(a).

5(a). Presumably this question refers to the registration for the claim to copyright in "Persistence of Memory Clip," and the answer to question 1(a) indicates the scope of this registration.

(b). See the reply to question 1(a).

6. No, in the sense of the reply to question 1(a). Page 68 of the amicus brief submitted on behalf of the Register of Copyrights

in the case of Mazer v. Stein, No. 228, October Term 1953 (347 U.S. 201), referred to in question 9 infra, illustrates a "work of art" wherein the copyrightable subject matter resides only in the housing for the clock but not in the clock broadly nor in the face and hands of the clock specifically. This particular "work of art" was entitled "Four Stages of Life," and was given registration number CL I 10352, under the law in effect prior to 1909, at which time only "works of fine art" were registrable. Through the personal efforts of some of the employees of the Copyright Office, resorting largely to memory, I am able to furnish the following random examples of similar registrations in recent years:

(A) "Clock Case," registration number Gp-8088.

Copyright Claimant: Syracuse Ornamental Co.

Date of Publication: 1 July 1954.

(B) "Flowered Clock," registration number Gp-15177.

Copyright claimant: Van Cleef & Arpels.

Date of Publication: 1 November 1957.

(C) "Dutch Treat," registration number Gp-21571.

Copyright claimant: General Electric Co.

Date of Publication: 9 July, 1959.

In none of the foregoing registrations does the clock per se constitute copyrightable subject matter.

7 (a), (b), (c) and (d). No answer is required to these questions since the answer to question 6 was not "yes." However, the registrations referred to in question 6 speak for themselves and the remarks in the reply to question 1(a), 2(a) and 3(a) are also pertinent here.

8 (a). The amicus brief submitted on behalf of the Register of Copyrights in the Supreme Court case of Mazer v. Stein, referred to in question 9, infra, lists the registration numbers of two "works of art"

which appear to be embodied in a sundial. The first of these, mentioned on page 28 of the brief, is entitled "Sundial, Motto 'Speedwell'," bears the registration number G-31979, copies deposited January 3, 1910, with copyright claimed by the Art School of the Young Women's Christian Association of the City of New York. The second, mentioned on page 62 of the brief, is entitled "Seaweed Fountain," bears registration number G-8896, copies deposited June 11, 1932, with copyright claimed by George J. Lober.

(b) See the reply to question 8(a).

9. I believe the brief speaks for itself. On the first page thereof, as the first paragraph, appears the following:

"This Court's order of October 12, 1953, granting the petition for a writ of certiorari, states that 'The Solicitor General is invited to file a brief setting forth, along with other matters he deems pertinent, the views of the Copyright Office and a statement of its relevant practice' (R. 87). In accordance with that invitation, this brief is respectfully submitted on behalf of the Register of Copyrights as amicus curiae."

Certainly the amicus brief was not intended to say, nor does it say, that copyright can subsist in the cooperating functional elements of a watch or clock, whether these cooperating functional elements be the dial face and the hands or the other parts of such working mechanism.

10. The brief prepared in connection with a specific case, on an issue different from the one involved here does not represent the "views of the Copyright Office" and contain a "statement of its relevant practice" some three years after the filing of the brief, because to state otherwise would assume that the Office were adhering to a position taken in the particular litigation and disregarding the decision of the Supreme Court in the Mazer case and relevant decisions since that time.

The position of the Office with regard to the registration of

claims to copyright in the type of work involved herein may be found in its Regulations, which appear in Title 37 of the Code of Federal Regulations. See also the last paragraph of the reply to question 9.

Parenthetically, it is noted that in this question and in many of the remaining ones, inquiry is directed to the particular date of January 4, 1957. In replying to each of the questions referring to this date, I do not admit thereby that said date is relevant to the question and specifically reserve the right to deny the relevancy of said date.

11. As a general proposition the views and practices of the Copyright Office are reflected in the "Regulations of the Copyright Office." The views of the Copyright Office with respect to the issues involved in this case, from the date of the filing of the first application on September 14, 1955, to the present, are contained in the answer filed herein on June 12, 1959.

I submit, however, that this question 11 is objectionable, among other reasons, because it calls for legal conclusions and is argumentative.

12. The "Regulations of the Copyright Office," continuously from 1949 to date have provided that the "works of art" classification "includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned ... " See also section 202.10(c) of the Regulations.

13. Since August 11, 1956, the Regulations (21 F.R. 6021) have included in section 202.10 the statement that "The potential availability of protection under the design patent law will not affect the registrability of a work of art ... " This is in keeping with the language of the Supreme Court in the Mazer case that "Neither the Copyright Statute nor any other says that because a thing is

patentable it may not be copyrighted," but note that the Supreme Court does not say a party may obtain both copyright and design patent protection on the same article.

14(a). The Regulations of the Copyright Office have, since August 11, 1956, included in section 202.10 the provision that "... a copyright claim in a patented design ... will not be registered after the patent has been issued."

(b) It is not clear whether this question refers to the policy set forth in question 14(a) or to the reason for the rejection of the application for the "Galaxy" watch, which is the subject of this litigation. The basis for the rejection of that application is set forth in our letter dated September 29, 1955, a copy of which is attached hereto.

(c) Yes.

(d) Title 17 U.S. Code, and decisions of United States courts interpreting that Code.

15(a). The Copyright Office makes no evaluation looking toward registration of a "work of art" by reference to "novelty."

(b) The Office does not as a matter of policy "determine 'originality' of a work of art by reference to other prior art" and makes no originality search in the patent sense. It does not attempt to determine whether a work is original with the claimant; it ordinarily assumes, for the purposes of the application, that it is and it will register claims in the same work by two or more persons who present conflicting claims. Since the law covers only the original "writings of an author," the Office does not register claims where the work displays no presence of creative authorship. Where works appear on their face to consist of public domain matter or to contain no minimal original authorship, the copyright examiner may consult public domain sources in order to determine whether there is any basis

for registration.

(c) Since there is no search of the "prior art," see (a) and (b) above.

(d) Inasmuch as the answer to question 15(c) was not "yes," this question is not applicable.

16(a). No, However, subsequent to the institution of this litigation, the Department of Justice in defense of this suit had a search conducted of the files of the Patent Office in order to establish the facts.

(b) Since the answer to question 16(a) was not "yes," this question is inapplicable.

(c) Since the answer to question 16(b) was not "yes," this question is inapplicable.

17. The words "work of art" include, a fortiori, "work of fine art."

18. No such distinction played any part in the denial of registration of the application involved in this litigation.

19. The policy of the Copyright Office is not determined by the case of U. S. v. Perry, 146 U.S. 71, 74-75, the source of this quotation, but by the Supreme Court decision in the case of Mazer v. Stein, other applicable court decisions, and the Regulations of the Copyright Office issued pursuant to 17 U. S. Code section 207.

Arthur Fisher

ARTHUR FISHER
Register of Copyrights

Subscribed and sworn to before me this 27th day of November, 1959.

Notary Public
NOTARY PUBLIC

COMMISSION EXPIRES MARCH 14, 1962

[SEAL]

Copy of the foregoing Answer to Interrogatories was served on Clarence M. Fisher, Esq., attorney for the plaintiff, by mailing the same to him, postage prepaid, at his address: 944 Pennsylvania Building, 425 13th Street, N.W., Washington 4, D. C., this 27th day of November, 1959.

Robert J. Asman
ROBERT J. ASMAN
Assistant United States Attorney

REGISTERED UNITED STATES PATENT OFFICE
ROBERT T. VANDER

THIS OFFICE, in accordance with the provisions of the Act of November 19, 1918, as amended, has the honor to advise you that the application for a patent for the invention of a process for the production of a certain article of manufacture, as described in the foregoing specification, has been assigned to the Board of Patent and Trademark Appeal, and the same is now pending before the Board of Patent and Trademark Appeal.

Very truly yours,

REGISTERED UNITED STATES PATENT OFFICE

Respectfully and yours to Robert T. Vander, November 19, 1918.

REGISTERED UNITED STATES PATENT OFFICE
VANDER T. ROBERT

Reference is made to the Act of November 19, 1918, as amended.

The Board of Patent and Trademark Appeal, in its decision of the case of Vander v. Board of Patent and Trademark Appeal, dated November 19, 1918, has held that the application for a patent for the invention of a process for the production of a certain article of manufacture, as described in the foregoing specification, is not entitled to a patent.

1. The Board of Patent and Trademark Appeal has not determined by its decision of the application involved in this litigation, whether or not the application is entitled to a patent.

2. No such distinction being made in the Board of Patent and Trademark Appeal's decision, the Board of Patent and Trademark Appeal has held that the application is not entitled to a patent.

It is respectfully suggested that the Board of Patent and Trademark Appeal should be asked to reconsider its decision.

(c) Since the answer to question 1(a) was not "yes," this question is respectfully suggested.

(d) Since the answer to question 1(b) was not "yes," this question is respectfully suggested. The Board of Patent and Trademark Appeal has held that the application is not entitled to a patent.

1(a) However, inasmuch as the Board of Patent and Trademark Appeal has held that the application is not entitled to a patent, this question is respectfully suggested.

(b) Inasmuch as the answer to question 1(c) was not "yes," this question is respectfully suggested.

(c) Since there is no answer to the Board of Patent and Trademark Appeal's decision, this question is respectfully suggested.

FILED
NOV 27 1959
HARRY M. HULL, CLERK

DNV: dnm
9-21-55

FILED

NOV 27 1959

HARRY M. HULL, CLERK

Pennie, Edmonds, Morton,
Barrows & Taylor
247 Park Avenue
New York 17, New York

Gentlemen:

Receipt is acknowledged of your letter of September 13, 1955, transmitting an application, photographic copy and fee of \$4.00 for registration of a claim to copyright in behalf of Vacheron & Constantin-Le Coultre Watches, Inc. for a work under Class G of the copyright law entitled GALAXY WATCH, the date of first publication of which you give as August 31, 1955.

Unfortunately, neither the general idea involved in the manufacture of the type of watch shown in the photographic copy you submit nor the watch itself would constitute a proper subject for copyright. While the regulations of the Office have been changed to permit the registration of paintings, drawings and sculpture, even though embodied in articles of manufacture, this can only be done where works of the type submitted do embody paintings, drawings or sculpture which would properly constitute a "work of art" within the meaning of the copyright law. No elements are discernible in the work deposited in the present case which we believe would make it a proper subject for registration of copyright under this category.

Under the circumstances, we are returning your application and copy herewith. Your fee of \$4.00 will be refunded shortly under separate cover.

Sincerely yours,
Abraham L. Hamenstein
Chief, Examining Division

Enclosures:

7 Appl. & copy ret'd. ✓

32 卷

Under separate cover:

Tr. Ck. \$4.00 - in due course.

✓

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VACHERON & CONSTANTIN-LE COULTRE	:	
WATCHES, INC.	:	
580 Fifth Avenue	:	
New York 36, New York,	:	
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	No. 1038-59
	:	FILED
ARTHUR FISHER	:	
Register of Copyrights	:	
Washington, D. C.	:	DEC 3 1959
	:	
Defendant.	:	

HARRY M. HULL, CLERK

PLAINTIFF'S SECOND INTERROGATORIES UNDER RULE 33

Now comes plaintiff, Vacheron & Constantin-LeCoultre Watches, Inc. pursuant to Rule 33, Federal Rules of Civil Procedure, and demands that defendant, Arthur Fisher, Register of Copyrights, make answer, separately and fully in writing under oath and over his signature to the following numbered interrogatories on or before December 14, 1959:

1. What are the citations of the "relevant decisions" referred to in answer No. 10 of "Defendant's Answers to Plaintiff's Interrogatories Under Rule 33" served on plaintiff November 27, 1959?

2. Does the letter ~~of~~ the Copyright Office to plaintiff dated September 29, 1955 set forth the complete basis for the rejection of the application for copyright registration filed by plaintiff on September 14, 1955?

3. What is the particular section or what are the particular sections of Title 17 U.S. Code upon which the refusal to register plaintiff's application for registration of its copyright filed January 4, 1957 is based and what are the citations of the "decisions of United

States courts interpreting that Code" as referred to in the answer No. 14(d) of "Defendant's Answers to Plaintiff's Interrogatories Under Rule 33" served on plaintiff November 27, 1959?

4. What are the citations of the "other applicable court decisions" referred to in answer No. 19 of "Defendant's Answers to Plaintiff's Interrogatories Under Rule 33" served on plaintiff November 27, 1959?

5. What are those statements, if any, made in the Amicus Curiae brief submitted by the Register of Copyrights to the Supreme Court in the Mazer v. Stein case which reflected the "relevant practice" of the Copyright Office with regard to the registrations of copyright on three-dimensional works of art at the time the brief was filed and which did not reflect the "relevant practice" on registrations of copyright on three-dimensional works of art on January 4, 1957?



CLARENCE M. FISHER, ESQ.
Attorney for Plaintiff
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425 Thirteenth Street, N.W.
Washington 4, D. C.

Of Counsel:

STANTON T. LAWRENCE, JR., ESQ.
ROBERT McKAY, ESQ.

PENNIE, EDMONDS, MORTON, BARROWS
AND TAYLOR
247 Park Avenue
New York 17, New York

Service of a copy of the above Interrogatories is hereby acknowledged.

Rec'd
DEC. 3 1959

Oliver Gasch (Nancy V. Small)
Assistant United States Attorney

U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530
JAN 10 1960

TO: THE ATTORNEY GENERAL
FROM: THE DEPARTMENT OF JUSTICE
SUBJECT: [Illegible]

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FILED

DEC 3 1959

HARRY M. HULL, CLERK

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VACHERON & CONSTANTIN-LE
COULTRE WATCHES, INC.,
580 Fifth Avenue
New York 36, New York

Plaintiff,

v.

ARTHUR FISHER,
Register of Copyrights
Washington, D.C.

Defendant.

FILED

DEC 14 1959

Civil Action

No. 1038-59

HARRY M. HULL, CLERK

DEFENDANT'S ANSWERS TO PLAINTIFF'S
SECOND INTERROGATORIES UNDER RULE 33

Defendant responds to plaintiff's interrogatories
as follows:

1. In addition to the Mazer case, the "relevant decisions" referred to are those that concern the copy-rightability of "works of art" within the meaning of the copyright law. As to what specific decisions might be involved, it would appear that they are equally available to the plaintiff and that no reason appears to require their submission to the plaintiff at this time in advance of the filing of memoranda or briefs.

2. No. The letter of the Copyright Office to plaintiff dated September 29, 1955, does not set forth the complete basis for the rejection of the application for copyright registration filed by plaintiff on September 14, 1955. The claim to copyright is ineligible for registration for more than one reason. One of such reasons is that the subject matter is without the jurisdiction of the

copyright law. Defendant contends that it is not necessary to attempt to deal with all possible reasons in a letter of rejection. The principal reason for the rejection in question, as mentioned in our letter of September 29, 1955, was simply that the "Galaxy" watch was not, in the opinion of our Examining Division, a "work of art" within the meaning of the copyright law nor of the Regulations of the Copyright Office, and hence could not be registered. However, the defendant's answer filed in this litigation lists other reasons which might have been cited and are asserted as a basis for the rejection.

3. Title 17 U.S. Code, sections 1, 4, 5, 7, 8, 10, 11, 115, 207, 209 and 215. The "decisions of the United States courts interpreting that Code" are equally available to plaintiff and no reason appears to require their submission to the plaintiff at this time. However, many decisions are found in Title 17, United States Code Annotated.

4. See the answer to question 1.

5. This question subsumes that the "relevant practice" of a governmental body can be ascertained by reference to a brief filed by it some years anterior in point of time in connection with litigation that does not involve the same facts as are presently at issue. I take issue with this concept. The position of the Office at any given time may be determined by its then current Regulations rather than in prior briefs.

Furthermore, this question 5 is merely repetitious with respect to the previous interrogatory question 11. In this connection see defendant's answers 9, 10 and 11 to the correspondingly numbered interrogatories.

Moreover the amicus curiae brief was directed to a statue, whereas the case at bar is directed to a

mechanical device wherein the individual elements are primarily functionally cooperative and constitute the working parts of an operating machine defined as a watch.

Arthur Fisher

ARTHUR FISHER
Register of Copyrights

Subscribed and sworn to before me this 14^d day of December, 1959.

[Signature]

Notary Public

My Commission Expires August 31, 1961

Certificate of Service

I HEREBY CERTIFY that service of the foregoing Defendant's Answers to Plaintiff's Second Interrogatories Under Rule 33 has been made upon plaintiff by mailing a copy thereof to its attorney, Clarence M. Fisher, Esq., 944 Pennsylvania Building, 425 13th Street, N.W., Washington 4, D.C., this 14th day of December, 1959.

Robert J. Asman

ROBERT J. ASMAN
Assistant United States Attorney

mechanical device wherein the individual elements are
primarily functionally cooperative and constitute the
working parts of an operating machine defined as a watch.

FILED

DEC 14 1959

HARRY M. HULL, CLERK

ARTHUR FISHER
Register of Copyrights

Subscribed and sworn to before me this 14th day

of December, 1959.

Notary Public

Certificate of Service

I HEREBY CERTIFY that service of the foregoing
Defendant's Answers to Plaintiff's Second Interrogatories
Under Rule 33 has been made upon Plaintiff by mailing a
copy thereof to its attorney, Clarence M. Fisher, Esq.,
944 Pennsylvania Building, 425 13th Street, N.W., Wash-
ington 4, D.C., this 14th day of December, 1959.

ROBERT J. ASHMAN
Assistant United States Attorney

cal 6/12/59
PRAECIPE

2290-
p. 2

United States District Court
for the District of Columbia

the 14th day of December 19 59

VACHERON & CONSTANTIN-LE
COULTRE WATCHES, INC.

vs.

ARTHUR FISHER

FILED

DEC 14 1959

Civil
Action No. 1038-59

HARRY M. HULL, CLERK

The Clerk of said Court will please certify the above-entitled
case to the READY CALENDAR.

Robert J. Asman

Address Asst. U.S. Attorney

Attorney for Defendant

Clarence M. Fisher

Address 944 Pennsylvania Bldg.

Attorney for Plaintiff

col
6-12-59
16251.1 C/R 12-14-59

2290-8
JFC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 25 1960

HARRY M. HULL, Clerk

VACHERON & CONSTANTIN-LE COULTRE :
WATCHES, INC. :
580 Fifth Avenue :
New York 36, New York, :

Plaintiff,

v.

ARTHUR FISHER :
Register of Copyrights :
Washington, D. C., :

Defendant.

Civil Action

No. 1038-59

STIPULATION OF DISMISSAL UNDER RULE 41(a)(2)

IT IS HEREBY STIPULATED that the above-entitled
action may be dismissed with prejudice, plaintiff bearing
costs.

CLARENCE M. FISHER
944 Pennsylvania Bldg.
425 Thirteenth Street, N.W.
Washington 4, D.C.

Dated:

Jan 22, 1960

Clarence M. Fisher
Attorney for Plaintiff

Dated:

Jan. 25, 1960

Robert J. Asmann
Attorney for Defendant

United States District Court
for the District of Columbia

the 29th day of January 19 60

Vacheron & Constantin-Le Coultre

Watches, Inc.

vs.

Plaintiff

Civil

Action No.

1038-59

Arthur Fisher

Defendant

The Clerk of said Court will please enter the above entitled

case as dismissed with prejudice.

ROBERT J. ASMAN

Assistant United States Attorney
Attorney for Defendant

United States Court House
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